
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

MERLIN SCOTT PHILLIPS, VICKIE
PHILLIPS, and S&V PHILLIPS
DEVELOPMENT, L.C.,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; SCOTT SPELLMON;
JAMES HANDURA; MATTHEW
WILSON; JASON GIPSON; and
MICHAEL JEWELL,

Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING MOTION FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT

Case No. 2:21-CV-355-TS-DBP

District Judge Ted Stewart

Plaintiffs sued Defendants under the Administrative Procedures Act and for alleged constitutional violations related to designation of their property as federally protected wetlands.¹ After Defendants filed a motion to dismiss, Plaintiffs amended the complaint.² Defendants again moved to dismiss, and Plaintiffs now seek leave under Fed. R. Civ. P. 15(a)(2) to amend the complaint a second time.³

When the opportunity to amend as a matter of course under Rule 15(a)(1) has expired, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”⁴ Plaintiffs assert that the amendments

¹ Docket No. 2.

² Docket No. 38.

³ Mot., Docket No. 60.

⁴ Fed. R. Civ. P. 15(a)(2); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (“In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on

will add detail to their allegations and clarify their claims.⁵ Defendants do not oppose the request⁶ and the court can identify no basis on which to deny it. Therefore, the court will grant Plaintiffs' motion.

Defendants request that the court bar Plaintiffs from filing further amendments.⁷ Such an order would be premature. However, given the number of previous amendments, any further request to amend in response to a motion to dismiss will be evaluated with skepticism.

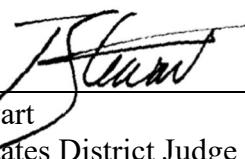
It is therefore

ORDERED that Plaintiffs' Motion for Leave to File Second Amended Complaint (Docket No. 60) is GRANTED. Plaintiff is directed to file their Second Amended Complaint within fourteen (14) days of this Order. It is further

ORDERED that Defendants' Motion to Dismiss (Docket No. 51) is DENIED AS MOOT.

DATED this 24th day of February, 2022.

BY THE COURT:



Ted Stewart
United States District Judge

the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’”).

⁵ Mot. at 2–5.

⁶ Resp. to Mot., Docket No. 63 at 1 (“[Defendants] neither consent to nor oppose the relief requested.”).

⁷ *Id.* at 2, 5.